

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BECKER FAMILY BUILDERS CO-  
PLAINTIFFS GROUP,

Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, as receiver for  
WESTSOUND BANK; and WSB  
FINANCIAL GROUP, INC.,

Defendants.

CASE NO. C09-5477RJB

**SUPPLEMENTAL ORDER ON  
DEFENDANT FEDERAL DEPOSIT  
INSURANCE CORPORATION'S  
MOTION FOR SUMMARY  
JUDGMENT ON THE BECKERS,  
BURLINGAME AND CHRISTMANS'  
CLAIMS UNDER CR 56(b)**

This matter comes before the Court on the Defendant Federal Deposit Insurance Corporation's ("FDIC") Motion for Summary Judgment on the Beckers, Burlingame, and Christmans' Claims under CR 56(b) (Dkt. 39) and the Declaration of Joseph R. Christman in Opposition to Defendants FDIC's Motion for Summary Judgment Against Christman Claims and Becker Claims (Dkt. 88). The Court has reviewed the pleadings filed regarding the motion and the record herein.

**I. FACTS AND PROCEDURAL HISTORY**

The facts and procedural history of this matter are stated in this Court's September 17, 2010, Order on Defendant FDIC's Motion for Summary Judgment on the Beckers, Burlingame, and Christmans' Claims under CR 56(b) (Dkt. 89, at 1-4) and is adopted here by reference. That

1 Order granted the FDIC's motion to summarily dismiss all remaining claims and closed the case.  
2 Dkt. 89. The FDIC's motion was noted for consideration on September 10, 2010. Dkt. 39.

3 The night before the order granting the summary judgment motion was filed (on  
4 September 16, 2010, at 11:00 p.m.), Plaintiffs filed the Declaration of Joseph R. Christman in  
5 Opposition to Defendants FDIC's Motion for Summary Judgment Against Christman Claims and  
6 Becker Claims ("Christman Declaration"). Dkt. 88.

7 Mr. Christman states in his declaration that he had six development and/or construction  
8 loans with Defendant Westsound Bank. Dkt. 88, at 2. He states that on one loan the "Cambrian  
9 Avenue loan," Westsound refused to issue the last \$400.00 per house so that they could finish  
10 the three houses and put them on the market. Dkt. 88, at 4. He states that Westsound improperly  
11 promised him extensions to the Cambrian Avenue loan and then failed to extend his loan's due  
12 date. Dkt. 88, at 5.

13 He states that on another loan, the "Wildcat Lake loan," Westsound Bank pulled a "bait  
14 and switch." Dkt. 88, at 3. He asserts that he was assured by people at Westsound Bank that the  
15 Wildcat Lake loan would have an "interest carry" provision in it, when it did not. Dkt. 88, at 3.  
16 He also asserts that Westsound Bank told him that certain collateral would be required for the  
17 loan, but when he sat down to sign the loan paperwork, more collateral had been added. Dkt. 88,  
18 at 5. He does not provide a copy of the loan documents.

19 The Christman Declaration was not considered when the ruling dismissing the Plaintiffs'  
20 claims was issued.

## 21 **II. DISCUSSION**

### 22 **A. TIMING OF PLAINTIFFS' OPPOSITION PAPERS**

23 Pursuant to Western District of Washington Local Fed. R. Civ. P. 7(d)(3), opposition  
24 papers to a motion for summary judgment are due no later than the Monday before the noting  
25 date.

26 Plaintiffs' opposition papers - the Christman Declaration (Dkt. 88) - was due on  
27 September 6, 2010. It was filed on the 16<sup>th</sup> of September, well after the FDIC filed its' reply.  
28

1 This motion has been renoted several times. Further briefing from the FDIC, although  
2 potentially helpful, is unnecessary in deciding the motion. In the interest of fully and fairly  
3 considering the merits of the case, the Christman Declaration (Dkt. 88) shall be considered in  
4 light of the Court's prior order.

5 **B. FDIC'S MOTION FOR SUMMARY JUDGMENT**

6 The September 17, 2010, Order's ruling dismissing all Plaintiffs' remaining claims  
7 should not be changed after consideration of the Christman Declaration. The law stated therein,  
8 and legal analysis is adopted here by reference (Dkt. 89).

9 The Order held that the Plaintiffs' contract claims against the FDIC should be dismissed.  
10 Dkt. 89. Plaintiffs failed to comply with the requirements of the Financial Institutions Reform,  
11 Recovery and Enforcement Act ("FIRREA"), 12 U.S.C. § 1821, *et seq.* The prior Order's  
12 reasoning still applies. The ruling should not be altered even after consideration of the  
13 Christman Declaration.

14 Consideration of the Christman Declaration also does not change the prior Order's ruling  
15 that the economic loss rule bars Plaintiffs' claims for negligence and negligent  
16 misrepresentation. Further, the prior Order's decision to dismiss Plaintiffs' claim for unjust  
17 enrichment should also remain. Plaintiffs still fail to point to any admissible evidence on any of  
18 the three elements of unjust enrichment. Lastly, the Christman Declaration does not alter the  
19 Court's decision to dismiss Plaintiffs' claims under Washington's Consumer Protection Act.

20 The Order granting Defendant FDIC's Motion for Summary Judgment on Beckers,  
21 Burlingame, and Christmans' Claims under CR 56(b) (Dkt. 89) should be supplemented as stated  
22 herein and affirmed. Further, Plaintiffs have had ample time to respond to this summary  
23 judgment motion (which was originally filed on July 20, 2010). No further opposition papers  
24 shall be considered.

